

WEXPRO CO.

IBLA 90-3

Decided December 26, 1991

Appeal from a decision by the Assistant Director for Program Review, Minerals Management Service, denying appeal of an assessment of late payment interest charges for underpayment of royalties due on Federal oil and gas lease No. 048-270919-0. MMS 88-0169-O&G.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982: Assessments-- Mineral Leasing Act: Royalties--Oil and Gas Leases: Royalties: Interest--Payments: Generally

Where royalty payments due on Federal oil and gas leases are not received by the Department on the date that such payments are due, or are less than the amount due, the Department is required by statute to charge interest on such late payments or underpayments. The Mineral Leasing Act provides that interest charges collected on late payments under the Federal Oil and Gas Royalty Management Act of 1982 shall be paid into the Treasury of the United States, and that 50 percent thereof shall be paid by the Secretary of the Treasury to the State within the boundaries of which the leased land or deposits are located. The statute clearly contemplates that the lessee must pay all royalties, including those that will ultimately be paid to the State, into the U.S. Treasury. The Board of Land Appeals is bound to follow such statute and is not at liberty to consider whether interest may be forgiven based upon equitable considerations.

APPEARANCES: John F. Shepherd, Esq., Denver, Colorado, and Thomas C. Jepperson, Esq., Salt Lake City, Utah, for appellant; Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Wexpro Company (Wexpro) appeals from a decision of the Assistant Director for Program Review (Assistant Director), Minerals Management Service (MMS), dated July 21, 1989, denying Wexpro's appeal of a bill (No. 22844524) issued by the Chief, Payor Accounting Branch, Royalty Management Program, MMS. That bill assessed late payment interest charges

against Wexpro in the amount of \$20,878.12 for the underpayment of royalties due on Federal oil and gas leases for the period from October 1983 through April 1984.

Wexpro is unit operator of oil and gas wells in the Butcher Knife Spring Unit included in the Dakota "B" Participating Area (Dakota PA), Uinta County, Wyoming, approved with an effective date of October 11, 1983. In July 1984 an expansion of the Dakota PA was approved effective May 1, 1984, and Federal interest in the PA was reduced to approximately 82 percent. In May 1985, Wexpro completed a revision of royalty and working interest payments for the Dakota PA which included a State royalty interest. At that time, Wexpro mistakenly submitted application for a recoupment of \$72,989.56 in royalties paid to the United States for the period from October 1983 through April 1984, and paid that amount to the State of Wyoming (the State). No recoupment was due for this period, which was prior to the May 1, 1984, effective date of the expansion of the Dakota PA. Wexpro discovered the error in December 1987, and promptly advised the State and MMS (Statement of Reasons at 2).

In January 1988 Wexpro repaid \$72,989.56 to MMS. On February 1, 1988, the State sent Wexpro a check for that amount, representing Wexpro's overpayment in May 1985.

On March 22, 1988, MMS sent Wexpro an invoice for a late payment charge of \$36,149.92. This late payment charge was calculated from original due dates for the royalty until Wexpro made payment. On June 22, 1988, MMS reduced the late payment assessment to \$20,878.12, recalculating the interest from the date of the recoupment until Wexpro made payment. MMS' assessment of late payment charges for that amount is now on appeal.

In its appeal before MMS, Wexpro argued that since the State is entitled to one-half of the royalties on Federal oil and gas production in the State under the Mineral Leasing Act of 1920, as amended (MLA), 30 U.S.C. § 191 (1988), and since the State was already in possession of the entire royalty amount, fairness and equity dictate that the late payment charge imposed by MMS should be reduced by 50 percent. MMS rejected the argument, stating that it was without authority to waive part of the late payment interest charge, even though the State would ultimately receive one-half of the interest charge on moneys it had timely received. The Director stated:

The Appellant is asking MMS to forego collection of that portion of the late payment interest which would ultimately be disbursed to the State, because the Appellant believes that the State is not entitled to those funds. Such a request cannot be honored. * * * [The Secretary] is bound by the law and regulations. This is clearly a situation in which the Appellant should deal directly with the State.

(Decision at 5). The Assistant Director also rejected arguments made by Wexpro that it be given credit for overpayment in royalties to the State in

May 1985 "so as to reduce interest charges on other late royalty payments made during the same time period," and that, since the State conducted an audit in August 1985 and did not report the error, that no interest may properly be charged subsequent to that date. Id.

On appeal to this Board, Wexpro again argues that "principles of justice and equity" dictate that the State not receive interest payments for underpaid royalties where, in fact, those royalties were not underpaid to the State. Appellant argues that "[i]f the interest payment is not reduced by one-half, the State will be receiving interest on money that it had in its possession during the entire time period" (Statement of Reasons at 3). Appellant argues that charging interest under these circumstances does not further the purpose behind the late payment assessment, as Wexpro did not have use of the monies during the time MMS was not possessed of them, and as it actually paid the entity that was entitled to 50 percent of the payment.

Appellant relies upon Billings v. United States, 232 U.S. 261 (1914), in requesting the Board to approach the assessment of late payment charges with an equitable eye. In Billings, the general principle was enunciated that the Federal Government was entitled to interest charges on moneys due and owing, even in the absence of statute, "in accordance with the principles of equity and justice in the enforcement of an obligation." Id. at 286. Appellant argues that, in this case, the purpose behind legislation imposing late payment charges for underpayment or untimely payment of royalties is not served by imposing a charge that ultimately will be disbursed to the State, as the State had possession of the full amount of the royalty payment for the entire time. Appellant requests this Board, therefore, to adjust the amount of the late payment charge because the State would receive an interest assessment that it equitably does not deserve.

[1] Section 111(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1721(a) (1988), specifically provides, in the case of oil and gas leases, that "where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments." Likewise, 30 CFR 218.54(a) provides that "[a]n interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due." The regulation dealing with payment of royalties for oil and gas leases, 30 CFR 218.50(a), provides in pertinent part: "Royalty payments are due at the end of the month following the month during which the oil and gas is produced and sold."

Section 35 of the MLA, 30 U.S.C. § 191 (1988), sets out the United States' obligation to make timely payment of 50 percent of late payment charges from the lease to the State in which the leased lands are located:

All money received from * * * royalties, including interest charges collected under * * * [FOGRMA] * * *, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury to the State * * * within

the boundaries of which the leased lands or deposits are or were located[.] * * * Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. [Emphasis supplied.]

The statute specifies no circumstances in which the Department may depart from these obligations.

Nor have we found authority to recognize equitable exceptions to these provisions in the past. In ANR Production Co., 108 IBLA 387, 390 (1989), this Board rejected an equitable plea for interest to be calculated only from the date upon which the lessee was notified of the underpayment or from lessee's receipt of payment from the purchaser, observing that "[e]quitable principles apply when interest is assessed as an equitable remedy, not when interest is assessed pursuant to a statute or regulation." ^{1/} Where applicable statutes and/or regulations require the imposition of interest, this Board must look to the statutory and regulatory language in determining the propriety of Departmental actions, and is not at liberty to dispose of the issue based upon equitable considerations. The Secretary is bound by statutory mandate and regulatory promulgation. Veola & Aaron Rasmussen, 109 IBLA 106, 110 (1989); Kuugpik Corp., 85 IBLA 366, 370 (1985).

In its decision at page 4, MMS stated:

The MMS is required by law and by the regulations to charge interest on any late payments or underpayments involving Federal (or Indian) oil and gas leases. Section 111(a) of FOGPMA, 30 U.S.C 1721(a) (1982) states in part: "In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest * * *. Similar language appears in the regulations at 30 CFR 218.54 and 218.102 (1988). The courts have held consistently that duly promulgated regulations have the force and effect of law; are binding

^{1/} The passage of FOGPMA, requiring the collection of interest on late payments of oil and gas lease royalty, renders inapplicable earlier decisions of the Board assessing equitable concerns in deciding whether to impose interest. See, e.g., Full Circle, Inc., 35 IBLA 325, 340-41, 85 I.D. 207, 215 (1978); and Atlantic Richfield Co., 21 IBLA 98, 107, 82 I.D. 316, 320 (1975). Those decisions concerned circumstances where there was no specific statutory authority allowing the Department to impose interest. Such is no longer the case with oil and gas lease royalty payments.

upon all Departmental officials, including the Secretary; and may not be waived.
[Emphasis in original; citations omitted.]

Nor are we at liberty to depart from the applicable law and regulations. Relevant portions of the MLA provide that interest charges collected under FOGDRA "shall be paid into the Treasury of the United States; 50 percentum thereof shall be paid by the Secretary of the Treasury to the State * * * within the boundaries of which the leased land or deposits are or were located." 30 U.S.C. § 191 (1988) (emphasis added).) The statute clearly contemplates that royalties are to be paid into the United States Treasury, that late payment charges are to be assessed for the period of time that the royalties are delinquent from the United States Treasury, and that 50 percent of those charges are to be disbursed to the state in which the leased lands are located. The fact that Wexpro mistakenly overpaid royalty to the State, resulting in effect in giving the State the use of the overpayment, does not excuse MMS from its duty to enforce these provisions. 2/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes

Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

2/ It appears that whatever equity Wexpro has might better be asserted against the State.